UNITED STATES TAX COURT
WASHINGTON, DC 20217

KATHLEEN KAHN,	)	
	)	
Petitioner(s),	)	**CZ**
	)	
v.	)	Docket No. 1517-13 L.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

ORDER AND DECISION

This case is set for trial at the Court's June 1, 2015, Denver, Colorado session. On March 27, 2015, respondent filed a motion for summary judgment. Respondent seeks to sustain a Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330 dated December 13, 2012, upholding both (a) the filing of a notice of Federal tax lien, and (b) the proposed levy collection action, as to petitioner's section 6700 penalty liability for 2002, and petitioner's section 6701 penalty liability for 2002. On April 24, 2015, petitioner filed a response and objection to respondent's motion for summary judgment. Unless otherwise indicated, all section references are to the Internal Revenue Code in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

There are no genuine issues of material fact in this case, and we conclude that respondent is entitled to judgment as a matter of law as provided herein.

Petitioner resided in Colorado when she filed the petition.

Background

The record establishes and/or the parties do not dispute the following.

During 2002 petitioner, Eddie Kahn (petitioner's husband), and others promoted and sold abusive tax schemes to other individuals. Petitioner, Mr. Kahn, and their associates sold these abusive tax schemes through two businesses, American Rights Litigators ("ARL") and Eddie Kahn and Associates ("Associates").

In promoting these abusive tax schemes, ARL and Associates claimed, among other things, that U.S. citizens are "sovereign individuals" who are not subject to Federal income tax laws, that filing Federal income tax returns is a voluntary act, and that U.S. citizens have a legal right to not pay income taxes. ARL charged members an annual membership fee ($150 for single individuals, and $200 for couples) to remove their members' requirement to file Federal tax returns by asserting their "sovereignty." ARL offered its members "UCC type" services,

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which consisted of ARL filing a UCC financing statement, intending to place a lien on the member's property that would then supersede any IRS liens. ARL also offered its members "Corporate Sole Type" services, which consisted of ARL creating corporation soles for members and falsely declaring that the customer is a tax-exempt religious organization.

Petitioner's specific activities within ARL and Associates included acting as secretary of ARL and as a signatory on ARL's bank accounts, scheduling Mr. Kahn's seminar appearances, assisting with the seminars, selling Mr. Kahn's manuals, instructing customers to obstruct IRS examinations and collection activities, and advising members about fraudulent schemes to avoid their legal obligation to file Federal tax returns.

Petitioner knew or had reason to know that the abusive tax schemes and the materials promoting them contained false or fraudulent statements within the meaning of section 6700.

On December 8, 2003, the United States filed a complaint against petitioner and others seeking an order permanently enjoining them from the promotion of fraudulent tax schemes and other anti-tax activities. See United States v. Kahn, et al., Case No. 03-cv-00436 (M.D. Fla.). Petitioner did not file an answer in response to the United States' complaint in that case. Rather, petitioner filed a number of frivolous pleadings. Some of those documents were filed after the U.S. District Court for the Middle District of Florida (District Court) entered its default judgment and permanent injunction order against petitioner.

On August 12, 2004, the District Court issued a Default Judgment and Permanent Injunction against petitioner under sections 7402(a) and 7408 because petitioner and her co-defendants failed to respond to the United States' complaint. The permanent injunction enjoined petitioner and her co-defendants from tax advisement, correspondence, and preparation of tax documents. In its injunction order, the District Court specifically found that petitioner and her co-defendants were "engaging in conduct subject to penalty under I.R.C. section 6700 and 6701 and were interfering with administration of the internal revenue laws".

During the pendency of the above injunction action, a revenue agent was assigned to examine and possibly assess against petitioner penalties under sections 6700 and/or 6701. Initially, the revenue agent was instructed to hold off on his examination until respondent's Criminal Investigation Division had completed its investigation of petitioner. After completion of the criminal investigation, the revenue agent completed his examination and determined that petitioner was liable for civil penalties under both sections 6700 and 6701.

The revenue agent calculated both penalties based on ARL's membership list. As determined by the District Court in the injunction action, petitioner and her co-defendants marketed and sold their frivolous tax schemes, in part, through ARL. According to its membership list, ARL had 4,165 members. 685 members purchased ARL's "UCC type" services and 33 members purchased preparation of "Corporate Sole Type" returns. In calculating the penalties, the revenue agent adjusted the membership list number to take into account duplicate names, social security numbers with no names, names with all zeroes as social security numbers, and couples that were charged $200 total instead of $150 each. As a result, the revenue agent reduced the total number of members from 4,165 to 3,911, and the number of clients who

received "UCC type" services from 685 to 678. The adjustment did not result in a change to the 33 clients that had purchased "Corporate Sole type" services.

On April 13, 2009, respondent assessed a civil penalty of $688,350 against petitioner under section 6700 for taxable year 2002. Respondent sent to petitioner a notice of this assessment on April 13, 2009. The penalty assessed under section 6700 was based on petitioner's participation in the presentations and seminars which advised members of fraudulent schemes allegedly removing their requirement to file Federal tax returns and ARL's "UCC Services". Because ARL offered these services to their members for an annual $150 membership fee, the gross profit from the activity was $150 per member.

On April 20, 2009, respondent assessed a civil penalty of $33,000 against petitioner under section 6701 for taxable year 2002. Respondent sent to petitioner a notice of this assessment on April 20, 2009. The penalty assessed under section 6701 was based on petitioner's involvement in advising and preparing the "Corporate Sole type" returns.

Petitioner has unpaid civil penalty liabilities under section 6700 for promoting abusive tax shelters and section 6701 for aiding and abetting the understatement of tax liability. Respondent is attempting to collect those civil penalties through both a levy and a lien.

Petitioner timely filed a request for an administrative collection due process hearing for both the levy and lien collection actions. However, although the settlement officer assigned to the case attempted to schedule with petitioner a telephonic hearing, petitioner refused to participate in such hearing and to provide requested information to the settlement officer. The settlement officer explained to petitioner that if petitioner failed to provide anything specific to challenge the penalties, the settlement officer would have nothing from petitioner disputing the accuracy of the assessed penalties, and the settlement officer would have to sustain the levy and lien actions. As a result, respondent issued to petitioner the notice of determination upon which this case is based.

Petitioner in her petition disputes the propriety of the penalty assessments.

Discussion

Summary judgment serves to "expedite litigation and avoid unnecessary and expensive trials." Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Either party may move for summary judgment upon all or part of the legal issues in controversy. Rule 121(a). The Court grants summary judgment if the pleadings and other acceptable materials show no genuine dispute as to any material fact and a decision may be rendered as a matter of law. Rule 121(b); see, e.g., Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994); Bond v. Commissioner, 100 T.C. 32, 36 (1993). Respondent, as the moving party, must prove that no genuine issue of material fact exists and that respondent is entitled to judgment as a matter of law. Sundstrand Corp. v. Commissioner, 98 T.C. at 520. The Court will view any factual inferences in the light most favorable to petitioner, the nonmoving party. Id.

Petitioner, however, must do more than merely allege or deny facts; she must set forth "specific facts showing that there is a genuine dispute for trial." See Rule 121(d); Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). Petitioner has failed to raise any genuine dispute of material fact under that standard, and this case is ripe for summary judgment. We also conclude that respondent is entitled to judgment as a matter of law.

Where the validity of the underlying tax liability is properly at issue, we review the determination de novo. Sego v. Commissioner, 114 T.C. 604, 610 (2000); Goza v. Commissioner, 114 T.C. 176, 182 (2000). Where the validity of the underlying tax liability is not properly at issue, we review the determination for abuse of discretion. Sego v. Commissioner, 144 T.C. at 610; Goza v. Commissioner, 114 T.C. at 182.

A taxpayer may not challenge an underlying tax liability during a CDP hearing unless he or she did not receive a statutory notice of deficiency for the liability or did not otherwise have the opportunity to dispute the liability. Sec. 6330(c)(2)(B); see also Montgomery v. Commissioner, 122 T.C. 1, 9 (2004). The Court considers an issue only if the taxpayer properly raised that issue during the administrative CDP hearing. See Giamelli v. Commissioner, 129 T.C. 107, 115 (2007) (holding that the Court does not have jurisdiction to consider section 6330(c)(2) issues that were not raised before the Appeals Office). A taxpayer did not "properly raise" an underlying tax liability if the taxpayer failed to present the settlement officer with any evidence regarding the liability after being given a reasonable amount of time. Tucker v. Commissioner, T.C. Memo. 2012-30; Lee v. Commissioner, T.C. Memo. 2011-112; sec. 301.6330-1(f), Q&A-F3, Proced. & Admin. Regs.

In her CDP hearing request, petitioner indicated that she disputed her underlying tax liability. Petitioner, however, has failed to show that there is a genuine dispute as to any material fact with respect to its underlying tax liability. See Rule 121(d). We note that petitioner failed to participate in the CDP hearing. Petitioner likewise failed to provide any evidence to the settlement officer concerning the penalties. Consequently, the penalties for the period at issue are not properly before this Court. See sec. 301.6330-1(f)(2), Q&A-F3, Proced. & Admin. Regs. Because the underlying liability was not raised by petitioner during the administrative collection review hearing, petitioner may not raise that issue here to this Court. See Giamelli v. Commissioner, 129 T.C. at 112-115; Magana v. Commissioner, 118 T.C. 488, 493-494 (2002).

Where, as is the case here, the validity of the underlying tax liability is not at issue, we review the determination for abuse of discretion. Hoyle v. Commissioner, 131 T.C. 197, 200 (2008); Goza v. Commissioner, 114 T.C. at 182. A settlement officer has abused his or her discretion if the determination is arbitrary, capricious, or without sound basis in fact or law. Giamelli v. Commissioner, 129 T.C. at 111.

Section 6330(c)(3) requires the settlement officer to consider the following during a CDP hearing: (1) whether the requirements of any applicable law or administrative procedure have been met; (2) any issues appropriately raised by the taxpayer, and (3) whether the proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. See also Lunsford v. Commissioner, 117 T.C. 183, 184 (2001). Petitioner did not participate in the CDP

hearing or provide a collection alternative. Therefore, the settlement officer did not abuse her discretion.

Upon due consideration, it is

ORDERED that respondent's motion for summary judgment is granted. It is further

ORDERED that the Notice of Determination Concerning Collection Action(s) under Section 6320 and/or 6330 dated December 13, 2012, is sustained.

(Signed) Kathleen Kerrigan
Judge

Entered: **MAY 19 2015**